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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 09/720,583      | 06/25/2001  | Pieter Hendrik Pouwels | MBHB00-1314         | 2413             |

20306 7590 08/15/2002

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|                       |              |
|-----------------------|--------------|
| EXAMINER              |              |
| WALICKA, MALGORZATA A |              |
| ART UNIT              | PAPER NUMBER |

1652  
DATE MAILED: 08/15/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/720,583             | POUWELS ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Malgorzata A. Walicka  | 1652                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-42 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) 1-42 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ . | 6) <input type="checkbox"/> Other: _____                                    |

**Restriction is required under 35 U.S.C. 121 and 372.**

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-19, drawn to a plasmid of *Propionibacterium freudenreichii*, polypeptides encoded by its ORFs, vector comprising plasmid's sequences and said vector comprising any gene to be expressed.

Group II, claim(s) 20, drawn to a process for production a host cell comprising the plasmid of *Propionibacterium freudenreichii*.

Group III, claim(s) 21-26 drawn to a process of fermentative production of polypeptide or other compound.

Group IV, claim(s) 27, drawn to a polypeptide or compound prepared by the process of Group III.

Group V, claim(s) 28 and 29, drawn to the process for vitamin B<sub>12</sub> production.

Group VI, claim(s) 30, drawn to a polypeptide for use in a method of treating a human or an animal.

Group VII, claim(s) 31, drawn to a host cell for use in a method of treating a human or an animal.

Group VIII, claim(s) 32 and 36-38, drawn to a host cell and the process for manufacturing cheese.

Group IX, claim(s) 34 and 35, drawn to a foodstuff comprising a polypeptide or compound obtained by the process of Group II.

Group X, claim(s) 39, drawn to a host cell, which can be transformed with a vector of Group I.

Group XI, claim(s) 40, drawn to a polypeptide or compound for use in cheese making.

Group XII, claim(s) 41, drawn to use of the polypeptide or compound of Group IV.

Group XIII, claim(s) 42, drawn to a foodstuff comprising a host cell of Group II.

The inventions listed as Groups 1-XIII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons. Claims 1-19 have a common special technical feature, i.e., DNA sequences of the new plasmid. Claims 20-42 are directed to different methods of use of said plasmid and their products. 37 CFR 1.475 does not provide for **multiple products** or **methods** within a single application and therefore unity of invention is lacking with regard to Groups I-XIII. Thus, restriction is proper.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Malgorzata A. Walicka, Ph.D., whose telephone number

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is (703) 305-7270. The examiner can normally be reached Monday-Friday from 10:00 a.m. to 4:30 p.m.

If attempts to reach examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy, Ph.D. can be reached on (703) 308-3804. The fax phone number for this Group is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionists whose telephone number is (703) 308-0196.

Malgorzata A. Walicka, Ph.D.

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Patent Examiner



PONNATHAPU ACHUTAMURTHY  
SUPERVISORY PATENT EXAMINER  
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